

103 KAR 16:380. Finance lease property, safe harbor lease property, or qualified lease property.

RELATES TO: KRS 141.010(12)(h), 141.040, 141.120

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the department to promulgate administrative regulations to administer and enforce Kentucky's tax laws. This administrative regulation establishes the requirements for excluding transactions when computing Kentucky taxable net income for corporation income tax purposes.

Section 1. Definitions. (1) "Finance lease property" is defined in the 1983 IRC Section 168(f)(8)(B), codified previously as 26 U.S.C. 168(f)(8)(B).

(2) "IRC" or "Internal Revenue Code" is defined by KRS 141.010(3).

(3) "Purchaser-lessor" means the party that has contractual ownership of the finance lease property, safe harbor lease property, or qualified lease property for federal tax purposes only and receives tax benefits such as investment tax credit and accelerated depreciation.

(4) "Qualified lease property" is defined in the 1982 IRC Section 168(f)(8)(D), codified previously as 26 U.S.C. 168(f)(8)(D).

(5) "Safe harbor lease property" is defined in the 1982 IRC Section 168(i)(8), codified previously as 26 U.S.C. 168(i)(8).

(6) "Seller-lessee" means the actual owner and user of the finance lease property, safe harbor lease property or qualified lease property.

Section 2. Adjustments to Gross Income, Deductions, and the Apportionment Factor in Determining Kentucky Corporate Net Taxable Income. (1) For the seller-lessee:

(a) A depreciation deduction for finance lease property, safe harbor lease property, or qualified lease property shall be allowed as provided by IRC Sections 167 or 168, 26 U.S.C. 167 or 168 and related federal regulations;

(b) Lease payments made to the purchaser-lessor shall not be allowed as deductible expenses;

(c) Interest payments received from the purchaser-lessor shall not be included in gross income; and

(d) The original cost of the finance lease property, safe harbor lease property, or qualified lease property shall be included in the property factor pursuant to KRS 141.120(8)(a). Lease payments made by the seller-lessee shall not be capitalized and included in the property factor pursuant to KRS 141.120(8)(a).

(2) A purchaser-lessor shall not be taxable in Kentucky under KRS 141.040 solely due to ownership of finance lease property, safe harbor lease property, or qualified lease property.

(3) For the purchaser-lessor:

(a) A depreciation deduction for finance lease property, safe harbor lease property, or qualified lease property shall not be allowed;

(b) Lease payments received from the seller-lessee shall not be included in gross income;

(c) Interest payments made to the seller-lessee shall not be allowed as deductible expenses; and

(d) Finance lease property, safe harbor lease property, or qualified lease property shall be excluded from the purchaser-lessor property factor if otherwise subject to tax in Kentucky. (33 Ky.R. 1197; Am. 1604; 1792; eff. 2-2-2007.)